F.R.

THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 28 OF 2004

In the matter of an application under Article 226 of the Constitution of India

and

in the matter of

1. Shri Sonam Palden Bhutia,
S/o P.W. Bhutia,
R/o Upper Sichey,
P.O. & P.S. Gangtok,
East Sikkim.

2. Shri Kunga Tashi Bhutia,
S/o Pema Bhutia,
R/o Near T.N.A. Compound,
P.O. & P.S. Gangtok,
East Sikkim.

3. Shri Prashant Lamichaney,
S/o A. K. Lamichaney,
R/o Tadong, Dara Goan,
P.O. Tadong,
P.S. Gangtok,
East Sikkim.

4. Shri Hem Kumar Pradhan,
S/o Shri C. K. Pradhan,
Dara Gaon,
P.O. Tadong,
P.S. Gangtok,
East Sikkim.

5. Shri Sonam Gyaltsen Bhutia,
S/o Dorjee Tshering Bhutia,
R/o Upper Sichey,
P.O. & P.S. Gangtok,
East Sikkim. ..... **Petitioners**

versus

1. State of Sikkim,
through the Chief Secretary,
Government of Sikkim,
Gangtok.

2. The Director General of Police,
Police Headquarters,
Gangtok.

3. Shri S. D. Negi, IPS
DIG/Range & HQ,
Gangtok.

4. The Secretary,
Department of Personnel A.R. and Training,
Government of Sikkim,
Gangtok.

5. Ms. Chezum Lepcha

6. Mr. Milan Kanta Sharma

7. Ms. Rinku Wongmu Bhutia

8. Mr. Bikash Basnett

9. Mr. Chewang Dorjee Bhutia

10. Mr. Chandan Chettri

11. Mr. Bikash Rai

12. Ms. Sudha Basnett

13. Mr. Tulsi Thapa

14. Mr. Bijendra Thapa

15. Mr. Kinga Tharchen

16. Mr. Novin Rai

17. Mr. Bimal Gurung

18. Mr. Choley Tshering Bhutia

19. Mr. Tashi Chopel Bhutia

20. Mr. Mingur Tempo Nadik

21. Mr. Thendup Tseten

22. Mr. Sanjay Rai

23. Mr. Roshan Rai

24. Mr. Bikash Subba

25. Ms. Dawa Lhamu Pakhrin

26. Ms. Pema Rana (Manger)

27. Ms. Karma Eden Kaleon

28. Ms. Karma Doma Bhutia

29. Ms. Paru Ruchal

30. Ms. Sonam Yankeela

31. Ms. Renuka Chettri

32. Ms. Durga Singh Cintury

All are undergoing trainees at North Eastern Police Academy, Shillong, Meghalaya. ..... **Respondent**

For the petitioners : Shri B. Sharma assisted by Shri B. Pokhrel, Advocates.

For the respondent nos.1 to 4 : Shri J. B. Pradhan, Government Advocate and Karma Thinley, Assistant Government Advocate.

For the respondent nos.5 to 32: Nemo.

PRESENT:THE HON'BLE MR. JUSTICE N. S. SINGH, CHIEF JUSTICE (ACTING).
THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

Last date of hearing : 12th May, 2005.

DATE OF JUDGMENT : 23RD JUNE, 2005.

J U D G M E N T

A. P. Subba, J.

By this writ petition filed under Article 226 of the Constitution of India, the petitioners challenge the selections made by the respondents for filling up 28 vacancies of the Sub-Inspectors in the Police Department, Government of Sikkim. The 28 candidates who were selected and appointed against the said vacancies are the private respondent nos.5 to 32 herein.

2. The case of the writ petitioners is that the Director General of Police, Police Department, Government of Sikkim issued an advertisement inviting applications from male and female candidates to fill up 28 posts of Sub-Inspector of Police in the police department in the year 2004. The advertisement was published in the 'Sikkim Herald' dated 8th January, 2004. Even though the advertisement did not contain any specific syllabus and the marks allocated to each subject and similar other relevant information the petitioners having full faith in the

impartiality of the concerned authority applied for the same and sat for the written examination along with other candidates and qualified for viva-voce test. Thereafter, they also appeared at the viva-voce test. However, after the viva-voce test was over the results were not at all published by the department. Frequent visits made by the writ petitioners to the Office of the respondent-department to enquire about the results were all in vain. It was only from a newspaper report published in daily paper the 'NOW' dated 8th July, 2004 that they came to know of the results published by the department. According to the petitioners, they were shocked to notice that their names did not figure in the results published therein. Thereafter, they sought for detailed information regarding copy of the marks allotted for physical fitness test, written test, viva-voce test along with the roster point that was followed, particulars of the members of the Selection Board etc. However, the information was not supplied to them. Finding no alternative, the petitioners made representation to the Chief Secretary and also to the Office of the Director General of Police, Police Headquarters, Gangtok seeking requisite information. Since no information was furnished to them as per the request made to the said authorities, the petitioners issued lawyer's notice demanding justice. It was only to this lawyer's notice that a reply was ultimately given by the Office of the respondent no.2 but the reply so given was not a comprehensive one dealing with the details of information sought for. In the meantime,

the petitioners came across an official document dated 5th July, 2004 relating to medical fitness examination of the selected candidates. According to this document only the names of the 28 selected candidates were forwarded to the medical authorities for medical examination. This, according to the petitioners, strengthened their suspicion that the selection process was not fair in so far as it was not clear to them as to how the department was sure that all the 28 selected candidates will get through the medical examination and will be appointed against the 28 number of vacancies which were advertised.

Further, it is stated that the marks allocated for the viva-voce test, being 100 marks was excessive as it could make it open to the authorities to select anyone as per their choice by awarding maximum marks in the viva-voce test. It was also contended that the standard of physical fitness test prescribed for female candidates were different from that of the male candidates in so far as the test prescribed for female candidates was more lenient/relaxed. Furthermore, the number of candidates appointed by the department was more than the number of posts that were advertised. There was also non-compliance of the reservation quota and the 100 point roster in the process of selection and as a result the reservation in respect of the scheduled tribes, scheduled castes and other backward classes exceeded 50% of the total seats.

Accordingly, it was contended that the process of selection adopted and followed by the respondent no.2 was not fair and in accordance with law and as a result the selection made by the respondent no.2 of the 28 candidates was liable to be set aside.

3. The State-respondents in their counter-affidavit denied all the material allegations made in the writ petition. It was contended that in pursuance to the advertisement, applications were received from many applicants including the present writ petitioners. The Director General of Police constituted a Selection Board on 8th January, 2004 for the purpose of conducting recruitment of the Sub-Inspectors. The Selection Board so constituted conducted physical efficiency test of 1730 candidates in all at Tashi Namgyal Academy Play Ground, Gangtok from 15th January, 2004 to 19th January, 2004. Out of the total 1730 candidates, 585 male candidates and 132 female candidates qualified in the physical efficiency test. After the physical efficiency test was over, the department conducted written test at Tashi Namgyal Senior Secondary School, Gangtok on 22nd February, 2004. All the above 585 male candidates and 132 female candidates appeared at the written test. Out of the 585 male candidates 132 candidates qualified for viva-voce test and similarly out of 132 female candidates who had appeared for the written test 21 candidates qualified for the viva-voce test. The viva-voce test was conducted from 9th June, 2004 to 11th June, 2004. On

completion of the test, the Selection Board recommended the names of 28 selected candidates to the State Government for approval. The Government approved the names of all the 28 selected candidates on 4th July, 2004. On approval of the merit list by the State Government, the department issued appointment orders on 6th July, 2004 and deputed all the 28 candidates so appointed for undergoing training at North Eastern Policy Academy, Meghalaya.

It was accordingly denied that the results of the selection test conducted by the department were not announced and that such result was not displayed in the notice board of the Police Headquarters. It was stated that the results were declared by the Office of the D.I.G. Headquarters and the same was displayed in the notice board of the Police Headquarters after which the same was published in local dailies. It was denied that 100 marks were allocated for viva-voce test. It was also denied that there was non-compliance of the norms fixed for reservation quota and 100 point roster in the process of selection. According to them, the Civil Police, Vigilance, Indian Reserve Battalion and Sikkim Armed Police were amalgamated into one cadre and the 28 vacancies that were filled up were taken from roster point no.1 to 28 after amalgamation and as such, there was no violation of the reservation quota or the roster point. It was also denied that any candidates were appointed after the results were announced by the department. As regards separate norms for physical fitness of female

candidates in respect of the advertised posts, it was contended that such a norm was necessary as per the prescribed rules in order to ensure gender justice.

4. It was further contended that the cadre strength of Sub-Inspectors in Sikkim Police at the time of issue of the advertisement was 168 and these vacancies were required to be filled up by direct recruitment and promotion at the rate of 50:50. On the basis of such ratio the 50% of the total number of posts both for direct recruitment and for promotion comes to 84 posts each. The vacancy position at the time of inviting the applications to fill up the posts was as follows:-

		Sanctioned	Post filled up	Available vacancy
1.	Direct Recruitment	84	56	28
2.	Promotion	84	48	36

The 28 vacant posts of Sub-Inspectors in the direct recruitment quota were thus required to be filled up through competitive examination and accordingly necessary process for recruitment was initiated in terms of the relevant rules and other Standing Orders. It is contended that the provision of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 notified vide notification no.27/Gen/DOP dated 8th September, 2000 and the provision of the Standing Orders issued vide memo no.1/DGP/PHQ dated 28th January, 1993 by the Director General of Police which govern the recruitment of Sub-Inspectors in Sikkim Police were strictly adhered to by the Recruitment Board in the recruitment process.

It was also contended that the writ petitioners having appeared and participated in the selection and having failed to be selected were precluded from challenging the process of selection, at this stage.

It was, therefore, contended that there was neither any non-compliance with the recruitment rules or Standing orders nor violation of any fundamental rights of the writ petitioners. The writ petition was, therefore, liable to be dismissed *in limine*.

5. Shri B. Sharma, assisted by Shri B. Pokhrel, learned counsel for the petitioners and Shri J. B. Pradhan, learned Government Advocate assisted by Shri Karma Thinley, learned Assistant Government Advocate for the State-respondents 1 to 4 were heard. Out of 32 respondents the name of the respondent at serial no.32 was deleted following the resignation tendered by him. The other private respondents (5 to 31) remained absent.

6. The submission of Shri B. Sharma is that the whole selection was vitiated *inasmuch* as the respondent Police Department failed to comply with the procedure prescribed for the selection of the candidates under the relevant rules. It is his further submission that the selection was vitiated on account of the following:-

(i) That the Selection Board constituted by the department was contrary to the relevant rules and therefore *non est* in law;

concerned. Hence it was denied that any case was made out by the writ petitioners for setting aside the selection already made by the department.

7. Shri Sharma's submission with regard to the first issue of non-compliance of the relevant rules which prescribe procedure to be followed in the matter of recruitment of Sub-Inspectors in Police is that the Sikkim Government Establishment Rules, 1974 are the relevant rules which govern the recruitment for the post of Sub-Inspectors in the police department and according to these rules the examination for such recruitment is required to be conducted by the Establishment Department of the Government and not by the Police Department. According to further submission made by Shri Sharma, the Selection Committee to be constituted for the purpose of conducting the examination under these rules should comprise of the Commissioner, the Secretary, Establishment Department and other members whereas the Recruitment Board constituted by the Director General of Police in the present case consisted of the officers of that department only. It was therefore submitted that neither the relevant Recruitment Rules were followed nor the Selection Board was constituted in accordance with the rules.

8. The submission made by the learned Government Advocate in reply to the above is that the Sikkim Government Establishment Rules, 1974 cited and relied on by the petitioners in support of the above contention no longer apply to

recruitment to police service after the promulgation of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 and the relevant Standing Orders issued by the Director General of Police in this regard. It was his submission that on and after the publication of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000, the recruitment to the police service shall be governed by these rules and the Standing Order issued by the Director General of Police. Thus, it was submitted that the Recruitment Rules which were followed were relevant and the Selection Board constituted under the provision of the said rules was valid.

The above would therefore show that the very first controversy between the parties relates to the question of applicability of the relevant Recruitment Rules and Standing Orders, if any on the subject. No doubt, the Sikkim government Establishment Rules, 1974 referred to by the writ petitioners contains a chapter which deals with recruitment. An extract of Chapter II of the said rules filed by the writ petitioners and marked as Annexure 7 shows that it prescribes norms for recruitment such as method of selection, subject for written test and total marks to be allotted to each subject, marks for viva-voce etc. It however appears that these provisions have been superseded and they no longer apply to recruitment of post including that the Sub-Inspectors in the Police Department.

A perusal of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 shows that the provision of the rules were to come into force from the date of their publication in the official gazette. The copy of the Government Gazette filed by the respondent-department along with the counter-affidavit and marked as Annexure R-1 shows that these rules were published on 11th September, 2000. Hence, there is no doubt that on and from the date of their publication i.e. 11th September, 2000 the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 came into force and the same regulates the recruitment, promotion and seniority of the members of the service holding the posts upto and including Inspectors in Sikkim Police Force, Sikkim Vigilance Police Force, Indian Reserve Battalion and Sikkim Armed Police. It is clear that the Standing Order dated 28th January, 2003 issued by the Director General of Police also deals with advertisement of the vacancy, method of selection, constitution of the Selection Board etc. and thus supplements the above rules.

9. In view of the above position, it is necessary to notice the relevant provisions of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 and the Standing Orders issued by the department for a proper appreciation of the various issues raised by the parties.

Rules 4 and 5 of the above rules which provide for Constitution of the Force and the Method of recruitment, age, qualification and eligibility conditions are as follows:-

"***4. Constitution of the Force:***

The Force shall consist of the following, namely:-

(a) Persons holding the posts upto and including Inspectors under Schedule I of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1981.

(b) Persons holding the posts of Constable, Head Constable, Assistant Sub-Inspector, Sub-Inspector and Inspector under the Sikkim Vigilance Police Force (Recruitment, Promotion and Seniority) Rules, 1981.

(c) Persons holding the posts of Sub-Inspectors and Inspector under the Sikkim Armed Police (Recruitment, Promotion and Seniority) Rules, 1989.

(d) Persons recruited to the Force in accordance with the provision of these rules.

5. Method of recruitment, age, qualification and eligibility conditions:

The method of recruitment, eligibility conditions and other matters connected therewith shall be as specified in the Schedules. Relaxation in the upper age limit shall be 2 years in case of Home Guards."

10. Of the two Schedules appended to these rules Schedule I deals with method of recruitment of Constable, Head Constable and Assistant Sub-Inspector while Schedule II deals with recruitment of Sub-Inspector and Inspector. Since in the present case we are concerned with the recruitment of Sub-Inspectors, it is sufficient to extract the relevant part of the Schedule II as follows:-

SCHEDULE II

Sl. No.	Name of Post	Pay Scale	Age	Mode of Recruitment	Probation Period	Physical Measurement	Eligibility Condition
1.	Sub-Inspector	5000-150-8000	18-25 yrs.	i) 50% by direct recruitment	2 yrs.	a) Height – 5'5" b) Chest -3'3" with min. expansion of 2" c) Weight - 50 Kgs.	Class XII

	ii) 50% by promotion	2 yrs.	n/a	a) Qualifying length of service must be 5 years as Asstt. Sub-Inspector of Schedule I of these rules and as Major Havildar of Sikkim Armed Police. b) Must pass the pre-promotional examination if not a class XII pass.

The relevant portions of the Standing Order bearing no.1/DGP/PHQ dated 28th January, 1993 are as follows:-

"2. As and when assessment of the sufficient number of vacancies accumulate in the Sikkim Police (including Sikkim Armed Police), direct recruitment in the laid down proportion of the vacancies will be made in accordance with this Standing Order by the Selection Board constituted by the DGP/IGP as per Sikkim Police Force (Recruitment, Promotion and Seniority) Rules 1988 (Schedule – I) which was issued vide Government Notification No.126 dated 8.9.88.

3. ADVERTISEMENT

On receipt of instructions for recruitment to the post of Sub-Inspectors, vacancies will be advertised in the Sikkim Herald and other local newspapers in Sikkim. Special care should be taken to publish the advertisement at least 12 to 15 days notice in advance of the last day of receipt of the applications in the Police Headquarters. Wide publicity should be given so that information is available to candidates from all parts of Sikkim State. The dates of physical examination and efficiency test as well as date of written examination should also be mentioned. Other general conditions applicable to candidates for appointment in the Govt. generally, as determined and directed by government from time to time will also be incorporated in the advertisement.

7. METHOD OF SELECTION

The following method of selection will be adopted by the Selection Board :

i) All original documents of all the eligible candidates appearing before selection board will be scrutinised by the preliminary selection board to determine eligibility.

ii) The board will then conduct physical check of the candidates as per prescribed physical standards as para (a) above.

iii) Those candidates who meet the above standards will be put through a physical efficiency test as prescribed below.

13. CONSTITUTION OF THE SELECTION BOARD

The Board will be constituted by the DGP in terms of Government Notification No.126.

The maximum marks for the interview is 50."

11. As can be seen from the above extract of the rules and the Standing Order, the contention of the writ petitioners that the recruitment of Sub-Inspectors in the police department would be governed by the Sikkim Government Establishment Rules, 1974 is totally incorrect and equally baseless is the further contention that the constitution of the Selection Board is contrary to the rules. It is obvious that the writ petitioners lacked information about the relevant rules applicable to the recruitment of Sub-Inspectors to the police department.

It has been clearly laid down that a direct recruitment in the laid down proportion of the vacancies will be made in accordance with the standing order by the Selection Board constituted by the DGP/IGP in terms of the Sikkim Police (Recruitment, Promotion and Seniority) Rules, 1988. As per the procedure contained in clause 3 of the Standing Orders, the

vacancies have to be advertised in the Sikkim Herald and other local newspaper at least 12-15 days in advance of the last day of the receipt of the application in the Police Headquarters mentioning the date of physical examination, efficiency test as well as the date of written examination and other general conditions as applicable to candidates for appointment in the Government generally. As per clause 7 which provides for method of selection the original documents of the candidates found eligible are required to be scrutinised by the Preliminary Selection Board to determine eligibility and thereafter the Board will conduct physical check of the candidates as per prescribed physical standards and only those candidates who are found to meet the standard will be put through physical efficiency test as prescribed in para 8(a).

It is borne out by records produced before us that the vacancies in the present case were duly advertised and the written examination and the viva-voce test were duly conducted by the concerned authorities after going through the procedure laid down in the relevant rules and the Standing Orders. Therefore, the contention raised by the writ petitioners that the respondent-department failed to comply with the procedure laid down for recruitment of Sub-Inspectors seems to us to be devoid of merit.

As regards validity of the Selection Board constituted it may be noted that Clause 13 of the Standing Orders already quoted above clearly lays down as to how the Board shall be

constituted. It provides that the Board shall be constituted by DGP in terms of Government Notification no.126 i.e. Sikkim Police Force (Recruitment, Promotion and Seniority) rules, 1988. Schedule I appended to these rules provides that he Committee shall be as nominated by IGP which shall consist of not less than 5 and not more than 5 Gazetted Officer. The Recruitment Board constituted by the Director General of Police on 8th January, 2004 consist of the following:-

1. Mr. A. C. Negi, IPS, IGP/Crime – Chairman
2. Mr. S. D. Negi, IPS, DIGP/Range, Crime and HQ – Member Secretary
3. Mr. M. S. Tuli, IPS, C.O./SAP – Member
4. Mr. Sonam Tenzing Bhutia, SPS, SP/SG – Member
5. Ms. Sarda Rani Lepcha, SPS, CO/IRB – Member
6. Mr. D. B. Giri, SPS, SP/Trg. - Member

It is stated that out of the above 6 members, Shri M. S. Tuli, IPS, Commandant, Sikkim Armed Police at serial no.3 was deleted on his transfer to South District as Superintendent of Police and accordingly 5 of the remaining members constituted the Recruitment Board and conducted the examination.

The above Selection Board constituted by the Director General of Police in terms of Standing Orders issued vide memo no.1/DGP/PHQ dated 28th January, 1993 thus appears to be in conformity with the Standing Orders. Therefore, the contention of the writ petitioners that the constitution of the Selection Board was improper cannot also be accepted.

13. We may next take up the issue regarding marks allocated for viva-voce test. The contention of the writ petitioners in this regard is that the marks allocated for the conversational ability being 25 marks, personality 25 marks and general impression 50 marks the total marks for viva-voce test was 100. It however appears that the submission is without basis. Clause 10 of the Standing Order provides that the total marks allocated for the written test shall be 100 and a candidate shall have to secure the minimum of 50% in the qualifying test to be called for an interview. Clause 13 of the same Standing Order provides that the maximum marks for the interview would be 50. Accordingly, it was clarified by the respondents that the viva-voce marks allocated in the interview was only 50 marks as prescribed in the Standing Order and not 100 as alleged. It is therefore obvious that the contention of the writ petitioners that 100 marks were allocated for the viva-voce is but an irresponsible statement and as such the apprehension that the appointing authority could select any one according to their choice by awarding maximum marks in the viva-voce test in the case at hand is ill-founded. In this regard, it may be noted that the Apex Court in Ashok Kumar Yadav and others vs. State of Haryana and others reported in (1985) 4 SCC 417 has observed that both written examination and viva-voce test are accepted as essential features of proper selection and that there cannot be any hard-and-fast rule regarding the precise weight to be given to the viva-voce test as against

written examination, which may vary from service to service according to the requirement of that particular service, the minimum qualifications prescribed, the age group from which selection is to be made, the body to which the task of holding the viva-voce is entrusted and a host of other factors. In Anzar Ahmed vs. State of Bihar and others reported in (1994) 1 SCC 150 the Apex Court reviewed the entire case law on the subject and upheld a selection method which involved allocation of 50% marks for academic performance and 50 marks for the interview. It was observed that the very observations in Ashok Kumar Yadav's case (supra) would go to show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva-voce vis-à-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases.

Thus, viewed in the light of the above observation of the Apex Court, the contention raised has no merit and the same is rejected.

14. The next point raised by the writ petitioners is that out of the 28 candidates selected most of the candidates are the close relatives of the officials of the police department. In this regard, it has to be noted that in the counter-affidavit filed by the respondent-department, it was very fairly conceded that few of the selected candidates had their parents working in the police department but it was clarified that none of such selected candidates were related to any of the members of the Selection

Board. The learned Government Advocate contended that the mere fact that the parents of few of the selected candidates were working in the police department does not mean that the selection was vitiated by the vice of arbitrariness and bias. Even though the admitted position is that few of the selected candidates had their parents working in the police department, we are of the view that it would be contrary to any well-established principles of law to disqualify such candidates merely for the reasons that they had their relations working in the department. What is important and relevant in the case is whether the members of the Selection Board were related to any of those candidates as a result of which the fairness or impartiality of the selection can be doubted. Had it been the case the issue raised would have deserved proper examination in depth. But as the matter stands we find it unlikely that the doctrine of bias would be attracted in the present case merely for the reason that few of the candidates had their relations working in the department, in absence of other facts evidencing biased action on the part of the Selection Board. Admittedly the relations of the candidates working in the department had nothing to do with the Selection Board.

It has been held by the Apex Court in Ashok Kumar Yadav's case (supra) that mere suspicion cannot take the place of proof and it is not possible to strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva-voce examination might be arbitrary. It

has also been observed that the Court cannot sit in the judgment over the marks awarded by the interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives.

15. Now passing on to the next point raised by the writ petitioners it is stated that as per the information gathered by the writ petitioners the respondent-department sent two more candidates besides the 28 selected candidates thereby bringing the number of candidates/appointed to more than the number of posts that were advertised. The writ petitioners have raised doubts on the bona fides of the respondent-department on this account also. However, this allegation was vehemently denied by the respondent-department. It was confirmed that no other candidate except the ones selected and included in the merit list was sent subsequently. It is pertinent to observe that the writ petitioners were unable to substantiate the averment by producing any document showing such appointment in excess of the advertised post. Therefore, this issue raised by the writ petitioners being mere conjecture has to be rejected as baseless.

16. This brings us to the next objection relating to the irregularity in the medical examination of the 28 selected candidates. It was pointed out by Shri Sharma that an extract from the register maintained by the S.T.N.M. Hospital, Gangtok for OPD patient appended by the respondent-department in the counter-affidavit and marked as R-10 does not contain C.R.

numbers of each and every candidates who were medically examined. As per the said document one Karma Eden Manger who was medically examined does not find place in selection list. Further, Milan Kanta Sharma, Tulshi Thapa and Durga Singh Cintury who were selected and whose names find place in the selection list have been shown as female candidates in R-10. It was also pointed out that admittedly through over-sight 5 or 6 medical papers were not received on 7th July, 2004 for which also the appointment orders had already been issued on 6th July, 2004. It is, therefore, alleged that the respondents have taken the process of appointment so casually that they have even made the appointment on the basis of wrong information given by the staff. It was further alleged that the respondents had committed gross irregularities by issuing alleged appointment orders on 6th July, 2004 before completing C/A verification. In this regard, it is appropriate to note that Shri J. B. Pradhan, Government Advocate in reply to the above, very fairly conceded that some of the irregularities pointed out above by learned counsel for the writ petitioners did occur in the process that continued after the final selection of the candidates. It is, however, his contention that the whole selection process having been completed on the approval of the merit list by the State Government on 4th July, 2004 the irregularities pointed out above concerning the medical examination of the selected candidates and the issue of other appointment orders are irregularities that have occurred after

the process of selection was completed and as such these irregularities are curable. In support of his submission, the learned counsel relied on the decision of the Apex Court in State of U.P. vs. Harendra Arora and another reported in (2001) 6 SCC 392. The relevant observation made by the Hon'ble Court in para 13 of the judgment is as follows:-

> **"13.** The matter may be examined from another view point. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the enquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question on prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. In the case of *Russell v. Duke of Norfolk* it was laid down by the Court of Appeal that the principle of natural justice cannot be reduced to any hard-and-fast formulae and the same cannot be put in a straitjacket as its applicability depends upon the context and the facts and circumstances of each case." [emphasis added]

In the light of the above decision the question that arises in the present case is whether the irregularities that occurred after the completion of the selection process are of such fundamental nature which have to be complied with and if so whether the theory of substantial compliance would be available. In order to find an answer to the above question a reference to clause 15 of the Standing Order and the other following clauses 16, 17 and 18 would be useful. For the sake of convenience of reference, we may reproduce the clauses as follows:-

> "15. Medical Examination
>
> The candidates on the panel will be medically examined by the competent medical board in accordance with the medical standards prescribed by Government for the post of Sub-Inspector in the Police Department.
>
> 16. The candidates on the panel will fill the character verification forms after the final medical examination has been completed.
>
> 17. It must be clearly ensured that the medical examination and filling in of the verification form DOES NOT constitute an offer of employment.
>
> 18. On being found fit for appointment as probationary Police S.I. by the medical board and on being verified fit, action to comply with Government instruction prior to appointment may be taken and only after all clearances are obtained should an offer of appointment be made."

It is clear from the above that the requirement of medical examination and filling up of character verification form applies to only such candidates who are on the panel but such medical examination and filling up of the verification form is not to be

taken as constituting an offer of appointment. This shows that the requirement of medical examination and filling in of the verification form cannot be taken as being of fundamental nature in the whole process of selection.

No doubt, Shri Sharma relying on the decision of the Apex Court in A. P. Public Service Commission and another vs. B. Sarat Chandra and others reported in 1990 (2) SCC 669 and in the Manager Govt. Branch Press and another vs. D. B. Belliappa reported in (1979) 1 SCC 477 submitted that appointment does not denote only the final selection with preparation of select list but it includes several steps and it would not be open to the authority to say that one part of the proceedings are as per rules and the other part are not according to rules and the same will not cause prejudice to the petitioner. However, it is to be noted that both the above decisions do not seem to support the contention of Shri Sharma in any measure. What has been laid down in D. B. Belliappa's case is that "according to the principles underlying section 16 of the General Clauses Act the expression 'appointment' used in Article 16(1) will include termination of or removal from service also" while what has been observed in the other case of B. Sarat Chandra is to the effect that the process of selection which consists of various steps like inviting applications, seniority of applications, rejection of defective applications, conducting examinations, calling for interview or viva-voce and preparation of list of successful candidates begins with the

issuance of advertisement and ends with the preparation of selection list for appointment. Thus both the above decisions are not the authorities for the proposition that the medical examination which is a process to be undertaken after the preparation of the select list constitute essential part of the selection process. As per the procedure prescribed in the Standing Order, the question of medical examination of the candidates arises only after the approval of the selection list by the Government and it follows that the process of medical examination does not form essential part of the selection process in so far as the selection process does not stretch beyond preparation and approval of the select list. That the absence of medical report on the file will not vitiate the temporary appointment would be clear for the observation made by the Apex Court in Ram Lal vs. Union of India reported in (1996) 10 SCC 164. The facts in that case were that the petitioner was an ad hoc employee with temporary status. His services were terminated but was reinstated on the termination being set aside by the Court. Since there was no medical examination report on the record of the petitioner he was directed to undergo medical test and the medical examination having been done he was appointed on regular basis from the date of reinstatement. In the circumstances, grant of regular status to the petitioner with effect from the date of reinstatement and not from the date of initial appointment was held to be not illegal.

There is no doubt that there are some discrepancies in the medical reports as pointed out by Shri Sharma but it has to be noted that these discrepancies occurred on account of lapses on the part of the authorities of the S.T.N.M. Hospital which cannot be imputed to the respondent-department. It has been very fairly conceded by the respondent-department that some medical examination papers were not received or placed on the file when the appointment orders were issued and such omission took place on account of the emergent situation faced by the department. The admission made by the respondent-department and the emergent situation faced by it are highlighted in para (a) to (i) of the counter-affidavit as follows:-

> "(a) The Director, North East Police Academy at Shillong had sent a nomination letter for training of 28 sub-inspectors at the Academy at Barapani to the Police Department, Government of Sikkim with a direction that the nominated sub-inspectors were required to reach the Academy by 15.6.04 as the training was to commence from the next day i.e. 16.6.04.
>
> (b) After the entire exercise of selecting the candidates was over, the Police Department had processed the file for seeking Government approval for the appointment to the post of Sub-Inspectors and also sending them for training at Shillong. Due to various unforeseen reasons as evident from the concerned file, the file was received by the Police Department only on 4.7.2004 or 5.7.2004 after obtaining Government approval.
>
> (c) Since the training period had already commenced, the deponent herein who is the batchmate of Shri T. Pachau, I.P.S., Director, North East Police Academy, Shillong had made special and personal request for taking the 28 selected candidates from Sikkim for training with the batch which had already started its training from 16th June, 2004. Had the department not made special

request, the training of these selected 28 Sub Inspectors would have been deferred by a year.

(d) After much hesitation, the Director, North East Police Academy initially agreed to take them latest by 1.7.2005 and on further special request the Director agreed to take the 28 selected sub-Inspectors for training not later than 9.7.2004.

(e) Due to paucity of time as evident here-in-above the deponent being the then DIG/Headquarters, had to rush through process of issuing appointment orders and completion of all other formalities, issuance of uniform articles etc. and have than sent to the Academy before 9.7.2004.

(f) Such being the situation it necessitated the deponent to rush through the process of getting medical examination of the selected candidates. The candidates were directed to report Superintendent to STNM Hospital on 5.7.2004 for medical examination. On the 6th morning the results were pasted on the Police Headquarters Notice Board and also in the Police Station. Appointment orders were issued in the evening of 6.7.2004 subject to C.A. verification.

(g) It is submitted that as per the records maintained by the S.T.N.M. Hospital the medical examination of all the 28 candidates were conducted on 6th July, 2004 itself. A copy of the O.P.D. list dated 6th July, 2005 wherein names of 28 candidates appear is annexed hereto and marked as Annexure R-10.

(h) Due to inadvertence and oversight five or six medical reports were received on 7th July, 2004 for which too the appointment orders had already been issued on 6.7.2004. These was purely and solely due to wrong information given by the staff of the deponent stating that all medical reports had been received on 6th and were in order.

(i) The appointment orders issued on 6/7/2004 made the appointment of 28 selected Sub-Inspectors conditional upon later receipt of clear C/A verification. Even though at the time of issuance of appointment order 5/6 medical reports had not been received but it needs to be underlined that fitness reports in respect of all 28 candidates are in order."

We would like to place it on record that Shri S.D. Negi, D.I.G. of Police (HQ) who was present in the Court during the course of the hearing assisted the Court in appreciating the situation in which the whole matter had to be rushed through as stated in the above paragraphs. After explaining the situation Shri Negi submiited that the merit list as approved by the Government, the forwarding letter addressed to the Superintendent, S.T.N.M. Hospital for medical examination of the selected candidates, office copy of the merit list pasted in the Notice Board and the paper cuttings containing the results published in the NOW and the Sikkim Express are intact on the file. It was assured that there was absolutely no irregularities in respect of these papers. In order to ascertain the correct position, the confidential file bearing no.15/DGP/SIKKIM was produced before us for inspection on the direction given by this Court. We have perused the file and on such perusal we have been satisfied that there is no evidence of any manipulation of the record. The record shows that the merit list was approved by the Government on 6th July, 2004 and appointment orders were issued on 9th July, 2004. In view of this, we are inclined to accept the explanation given by Shri S. D. Negi, DIG (HQ) in the matter.

The next point raised by Shri Sharma is that the physical fitness test prescribed for male and female candidates being different the whole selection process was vitiated. The submission of Shri B. Sharma in this regard is that the standard

prescribed for the female candidates were more lenient/relaxed than that for the male and as such it cannot be said that the female candidates competed with male candidates in the whole selection process. Admittedly, the physical standard prescribed were different for male and female candidates. The respondent-department sought to justify the difference in treatment on the ground that the different standard prescribed for male and female candidates had to be adhered to in terms of the Standing Order which were meant for ensuring gender justice. A perusal of the related Standing Order shows that the standard prescribed for male and female candidates in 100 mtrs. race, 1500 mtrs. race, high jump, long jump and shot put were different for female candidates and to this extent the submission of Shri B. Sharma is factually correct. However, it is to be noted that such a preferential treatment in favour of female is permissible under the law. It is apparent that lack of sensitivity towards gender issues lies at the root of the apprehension that the reasonable difference maintained in the prescribed standard for male and female candidates strikes at the root of the equality clause of the Constitution. We hope it were realised by now that the preferential treatment in favour of the women is not based on the sex discrimination but on social facts attached to women as a class. It is for this reason that Article 15(3) of the Constitution permits special provision for women and children. It may be well to note that this provision has been widely resorted to and has been the basis

for a number of legislations that have been made for achieving gender justice. In this regard, the observation made by the Apex Court in Govt. of Andhra Pradesh vs. P. B. Vijaykumar and another reported in AIR 1995 SC 1648 is apposite.

> "The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article."

Viewed in the above light it becomes obvious that the provision prescribing different standard for male and female candidates in the related Standing Order is intended more to achieve gender equality than discrimination based on sex. The provision in our considered view serves to advance the cause of gender justice rather than hinder it by operating as a vitiating factor. It thus follows that the difference in standard prescribed for male and female candidate in the different physical tests does not vitiate the selection process.

17. One of the pertinent points raised by the learned counsel for the writ petitioners which is yet to be dealt with relates to non-compliance with the new reservation policy. The contention of Shri Sharma in this regard is that as per the new

reservation policy (under section 3.1.3) the reservation has been done in the following manner:-

1.	S.T.	-	31%
2.	SC	-	6%
3.	OBC	-	21%
4.	ECO weaker class belonging to unreserved communities below poverty line	-	11%
5.	Merit local with Sikkim Subject Certificate of Identification	-	31%

18. In view of the above reservation policy, it is the contention of Shri Sharma that the allocation of the seats in the advertisement is illegal as it failed to take account of economically weaker class. Besides, the allocation of seats for Scheduled Tribes and most Backward Classes differs from each other though both categories have 31% reserved. Similarly the allocation of seats to the Scheduled Castes is de horse the rules. Further, as the reservation apparently exceeds 50% the new roster is against the well-established law. Denying the above contention the respondent-department pointed out that the reservation policy referred to and relied on by the writ petitioners have since been superseded by notification no. 67/GEN/DOP dated 19th September, 2003. According to the respondent-department the allocation of seats made in the advertisement had been done as per 100 point roster giving effect to the policy adopted by the Government for providing adequate representation to different class of people in Government service in terms of the above notification

no.67/GEN/DOP dated 19th September, 2003 read with notification no.98/GEN/DOP dated 15th November, 2003.

A perusal of the above notification shows that all the earlier orders/notifications issued on the subject were duly superceded vide clause 6 of the notification.

The relevant portion of the notification no.67/GEN/DOP dated 19th September, 2003 reads as follows:-

> "3. Now, therefore the Governor hereby declares, that the Nepalese Communities of Sikkimese origin, belonging to Bhujel, Dewan, Gurung, Jogi, Kirat Rai, Manger, Sunuwar Mukhia and Thami, as Most Backward Classes and those belonging to Bahun, Chettri, Newar and Sanyasi as Other Backward Classes for the purpose of reservation in posts and services to be filled up by direct recruitment under the State Government and Public Sector undertakings.
>
> 4. And, Now, therefore the Governor, hereby approves the reservation for all the Sikkimese Communities in posts and services to be filled up by direct recruitment under the State Government and Public Sector undertakings as follows with immediate effect:-
>
> (i) Scheduled Tribes - 33%
> (List of communities notified vide Government of India notification No.18(3)Home/73 dated:6-7-1978 and notification No:17/Home/2003 Dated 5-4-2003.
>
> (ii) Scheduled Castes - 06%
>
> (iii) Most Backward Classes - 21%
> (Bhujel, Dewan, Gurung, Jogi, Kirat Rai, Manger, Sunuwar Mukhia and Thami)
>
> (iv) Other Backward Classes - 14%
> (Bahun, Chettri, Newar and Sanyasi)
>
> 5. The reservation provided for Women, Persons with disability and Ex-Servicemen with 30%, 3% and 3% respectively under horizontal scheme of reservation will continue as usual. However, 2%

reservation for sports persons and artisans of excellence will also be added to this scheme of reservation.

6. To this extent, all the earlier Order/ Notifications issued in this regard shall stand superseded. However, posts already advertised on the basis of earlier Notification shall, however, not be affected and shall continue to be governed by the earlier Notification on the Subject."

The provision made in the above notification thus seems to have taken care of the economically weaker class by declaring them as MBC and reserving 21% of the post for them.

Since question has also been raised regarding non-adherence to 100 point roster, it is necessary to make a reference to the relevant notification in this regard as well but before doing that it is useful to notice the reservations as given in the advertisement calling for applications.

As per the advertisement the reservation for the different categories was shown as follows:-

Sl. No.	***NAME OF THE POST***	***CATEGORY***	***NO OF POST***
1.	Sub-Inspector	S.T.	06
		S.T. (Women)	03
		M.B.C.	05
		M.B.C. (Women)	01
		O.B.C.	02
		O.B.C. (Women)	01
		S.C.	02
		Unreserved	06
		Unreserved (Women)	02
		Total	**28**

In order to have an idea of the different points allotted in the roster for the above reserved posts, it is useful to reproduce para (k) and (i) of the counter-affidavit which is as follows:-

> "(K) It is also pertinent to mention here that the Civil Police, Vigilance Police, Indian Reservation Battalion Police Force and Sikkim Armed Police have been amalgamated into one cadre with the implication that there will be a common recruitment and common posting. In view of the above, the roster application for the posts of Sub-Inspectors in these forces have been started from Point No.1. Accordingly, the following points was allotted for the 28 posts:-
>
> | CATEGORY | ROSTER POINT NO. | NO OF POST |
> |---|---|---|
> | ST | 2, 7, 12, 16, 22, 25 | 06 |
> | ST (Women) | 10, 19, 28 | 03 |
> | M.B.C. | 3, 9, 18, 24, 27 | 05 |
> | M.B.C. (Women) | 15 | 01 |
> | O.B.C. | 6, 20 | 02 |
> | O.B.C. (Women) | 13 | 01 |
> | S.C. | 5, 23 | 02 |
> | Unreserved | 1, 4, 11, 14, 17, 26 | 06 |
> | Unreserved (Women) | 8, 21 | 02 |
> | | **Total** | **28** |
>
> (i) The Police Department sought assistance of Department of Personnel, Government of Sikkim with regard to roster application of 28 posts of sub-inspectors to be filled up by direct recruitment through competitive examination."

19. Now, the notification bearing no.98/GEN/DOP dated 15th November, 2003 which deals with 100 point roster for the purpose of implementation of reservation quota in direct recruitment in pursuance of the above notification no.67/GEN/DOP dated 19th September, 2003 may be noticed. In para 2 of this notification the specific points have been

indicated showing the post to be reserved for the different categories. Para 3 which is relevant for the present purpose may be extracted as follows:-

> "3. The Governor is hereby further pleased to prescribe the following guidelines for the purpose of implementation of the aforesaid reservation Quota, namely:-
>
> (1) If a reserved vacancy remains unfilled for want of a suitable reserved community candidate, it is to be carried forward to subsequent recruitment years subject to the condition that it does not become three recruitment years old which is the maximum period for carrying forward of reservations from year to year and thereafter it lapses. Therefore, in order to save the lapsing of the reservation, the oldest carry forward reservation should be accommodated first.
>
> (2) The Model 100 Point Roster System is like steps in a ladder. While notifying vacancies the consecutive points in the roster should be taken into account without leaving any gap. Fresh recruitment should start from the point next to the point at which previous recruitment actually ended.
>
> (3) The roster system shall be applied in direct recruitment appointments in each category of posts. For example, grouping of posts from LDC to UDC or JAC to Accountant or vice-versa is not permissible.
>
> (4) Separate merit list on the basis of the written examination and/or interview shall be prepared for each category of candidate for whom reservations are made. Appointment to the post reserved shall be filled up by the candidates of the concerned category as per the merit list.
>
> (5) Wherever direct recruitment process had commenced by advertisement prior to issue of Notification No.67/GEN/DOP dated: 19.9.2003, they shall be dealt with under the old system.
>
> (6) The posts which have been carried forward under the old system shall stand carried forward.
>
> (7) Citizens claiming the benefit of reservation should submit certificate of SC and ST issued by authorized officer and for MBC or OBC issued by the officers authorized under Notification No.3/WD/95 dated 6th June, 1995."

20. Another notification relevant in this regard is the notification no.99/GEN/DOP dated 17th November, 2003 issued by the Government fixing the roster point for implementation of 30% reservation for women, 3% for ex-serviceman, 3% for person with disabilities and 2% for sports persons and artisans of excellence in jobs in each categories by way of implementation of the policy laid down vide notification no.67/GEN/DOP dated 19th September, 2003.

21. As can be seen from the above, the 28 vacancies that were filled up were taken from roster point 1 to 28 after amalgamation of Civil Police, Vigilance, Indian Reserve Battalion Force and Sikkim Armed Police into one cadre. It is obvious that after such amalgamation of the different services there will be a common recruitment and common postings. On a perusal of the reservation of posts done for different categories in the light of the relevant Government Notifications, we find that the reservation made and the roster points adopted by the respondent-department are in keeping with the new policy adopted by the State Government vide notification no.67/Gen/DOP dated 19th September, 2003. It is, of course, a different question if the new reservation policy declared by the State Government is against the established law. The contention of Shri Sharma is that the reservation in the instant case apparently exceeds 50% as such it is bad in law. In support of the contention that the total reservation cannot exceed 50%, the learned counsel relied on the decision of the

Apex Court in Indra Sawhney vs. Union of India and others reported in AIR 1993 SC 477 which, *inter alia*, lays down that the reservation contemplated in clause 4 of Article 16 of the Constitution should not exceed 50%. On this point reliance was also placed by the learned counsel on the decision of this Court in Bina D. Sharma vs. State of Sikkim in Writ Petition No.566 of 1998 decided on 12th July, 1999. In this decision, the Division Bench of this Court taking the view that the reservation exceeds 50% because on the roster point first and third vacancies have been ear-marked for reserved category held that the model 100 point roster needs to be modified or scrapped. However, on appeal filed by the State of Sikkim the Hon'ble Supreme Court set aside this judgment leaving the question of law open to be decided in appropriate case. The submission made by the learned Government Advocate on the basis of the judgment of the Supreme Court is that the view taken by this Court in the above cited case having been set aside the 100 point roster has to be taken as valid as of now. Thus denying that the new roster is against the well-established law it was submitted by the learned Government Advocate that assuming but not admitting that the reservation in the present case exceeds 50% the same was permissible in law. It has already been noticed above that the reservation and the roster points followed by respondent-department are as per the policy adopted by the State Government.

It is also to be noted that the notification relied on by the writ petitioners has, as already, stated above, been duly superseded and it is hardly necessary to observe that non-compliance of the provision of a notification which has been duly superseded entails any violation and brings in any infirmity in the action. It is further to be noted that the new notification under which the reservations were made and the roster points were followed are not themselves in challenge in these proceedings. Had they been in question the matter could certainly have been examined in depth. Therefore, in our considered view non-allocation of any reservation in favour of economically weaker class in the advertisement notice does not vitiate the selection it *inasmuch* as it is in conformity with the new reservation policy.

22. Having thus dealt with the main points raised, we may now take up some of the additional points. Shri B. Sharma also submitted that since all the petitioners had done well and some of them were more qualified than many of the respondents, the respondent-department may be directed to appoint them also. Reliance was placed in the decision of this Court in Khil Burna Gurung vs. State of Sikkim & Others rendered in Writ Petition No.6 of 1994 decided on 15th March, 1995. The last paragraph of the judgment which was relied on for the submission that if situation warrants the High Court can order for appointment of the petitioners is as follows:-

> "10. It cannot be denied that the Government has inherent power to review it's administrative orders more so, when admittedly a mistake has been committed. The Government cannot be bound by the rules and restrictions of judicial procedure that unless there is specific power to review, it cannot review it's earlier orders. It is only when the Government is exercising quasi judicial powers vested in them by statute that such an argument is available. The principle that the power to review must be conferred by statute either specifically or by necessary implications is not applicable to decisions purely of administrative nature. If the administrative decisions are reviewed, the decision taken after review are always subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. The Government is expected to follow all statutory requirements and also observe principle of natural justice where rights of parties are affected. "

23. A perusal of the judgment in detail would however show that the facts of the case were not identical to the present case in hand. In the case cited above, the petitioners were left out of the merit list on account of mistake in calculation and compilation of marks awarded in written test as well as the viva-voce test through over-sight. It was in view of this that the Court had come to the conclusion that a grave justice had been done to the petitioner Khil Burna Gurung and Hem Raj Rai and since the final disposal of the writ petition was likely to take more time and the training course of the DSP to which the petitioners were supposed to join had already started an interim order was passed by the Court directing the Government to send the two petitioners for joining the training course of DSP in the Police Training College, Phillour, Punjab. While passing the direction, it was observed as follows:-

> "9. ..... High Court has wide powers under it's inherent extra-ordinary jurisdiction under Article 226 and once the Court is satisfied that injustice has been done, it is it's duty to undo that injustice and not to allow perpetuation of injustice. No rule or technicalities can stand in the way while exercising such discretionary power under extra-ordinary jurisdiction to render justice. Grant of relief is within the discretionary power of the Court and even if it has not been asked for specifically, the Court can mould the relief having regard to germain and relevant facts and circumstances. The discretion of course has to be exercised with circumspection, consistent with justice, equity and good conscience. The Court must have regard for all the relief and must look at the substance of the matter and not its forms."

24. No doubt, we are in respectful agreement with the above observation of the Court. What we are unable to agree with the submission of the writ petitioners is that this Court in exercise of the wide powers can direct the respondent-department to appoint the petitioners in the present case as well since they are similarly situated with the respondents. The practice of passing necessary favourable orders in respect of persons similarly situated as a respondent has been deprecated by the Apex Court in Chandigarh Administration and another vs. Jagjit Singh and another reported in AIR 1995 SC 705. Paragraph 8 of the judgment which highlight the situation in which the guidelines had to be laid down may be quoted as follows:-

> "8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that

the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/ unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/ unwarranted action must be corrected, if it can be done according to law – indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case, in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor in his case. In our considered opinion, such a course – barring

> exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

25. The basis on which Shri Sharma made the above, prayer is that the writ petitioners did very well in the written test and having done equally well in the viva-voce test they were confident that they will get selected. Even though the claim of the petitioners that they have had very genuine expectations cannot be refuted in absence of any material to the contrary it may be noticed that the very logic that the candidate who fares well in the written test will also do equally well in the viva-voce test is, to say the least, fallacious. Had it been so, there would be no place for viva-voce test in the selection process. It goes without saying that in a selection process comprising of written examination as well as viva-voce test like the present one the well-recognised selection method would permit only the persons who top in aggregate to be selected.

26. Therefore, we are of the opinion that no such order directing the respondent-department to appoint the petitioners can be justified in the facts and circumstances of the case.

27. The writ petitioners' apprehension that the selection process was not at all fair is also based on the fact that the Selection Board recommended the names of only 28 candidates, i.e., the exact number of vacancies to be filled up. The question that arises, according to the learned counsel, is "as to how the Office of the respondent no.2 was sure that all the so-called candidates will qualify in the Medical Fitness Examination Test". It was his contention that since there would be no certainty that all the 28 selected candidates will get through the medical test some more names ought to have been recommended. We find the contention of the learned counsel contrary to the norms laid down in the Standing Order. Clause 14 of the said Standing Order lays down that "a merit list shall be prepared on the basis of the total marks obtained by the candidates in (a) physical efficiency (b) written test and (c) interview and a panel of names recommended as per the number of vacancies. No waiting list will be maintained". In view of such clear norms, the question of the selection process being arbitrary on account of recommendation of only 28 names cannot arise.

28. Therefore, what emerges from the above discussion is that none of the apprehensions entertained by the writ petitioners are founded on legitimate grounds. The writ

petitioners have not succeeded in showing violation of any statutory provision nor of the principles of natural justice which would amount to infraction of the equality clause of the Constitution or any of the fundamental rights guaranteed by the Constitution. We have already indicated above that there has been substantial compliance of the requirement of rules in the whole selection process and irregularities admittedly committed by the respondent-department would not vitiate the selection so as to make it void or invalid. It has been held by the Apex Court in Joginder Singh and others vs. Roshan Lal and others (2002) 9 SCC 765 that if the Committee has been properly constituted and the post is advertised and a selection process known to law which is fair to all, is followed, then the High Court will have no jurisdiction to go into the question whether the Departmental Selection Committee conducted the test properly or not when there is no allegation of *mala fides* or bias against any member of the Committee. It has also been observed that the High Court in exercise of its jurisdiction under Article 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee.

29. The case of the writ petitioners may also be considered from another point of view. Admittedly, the petitioners participated in the entire process of selection without any protest and have chosen to question the mode of recruitment only after having failed to qualify. It is well-settled

that when once a candidate has appeared in the interview for recruitment to the post on the basis of interview he has no right to challenge the mode of recruitment followed by the Board. Reference in this regard may be made to the decision of the Apex Court in Om Prakash Shukla vs. Akilesh Kumar reported in AIR 1986 SC 1043.

30. For the reasons stated above, we find no grounds to strike down the selections of the respondent nos. 5 to 32 already made by the Department of Police. However, we direct the State-respondents authority to conduct medical tests and character verifications of those private respondent Nos.5 to 31 afresh to meet the ends of justice and further made it clear that the appointment of these private respondents in the posts of Sub Inspector shall be subject to the outcome of such medical test and character verification.

Accordingly, the writ petition is dismissed.

(A. P. Subba)
Judge
23.06.2005

N.S. Singh, CJ(Actg.).

31. While concurring with the findings and observations made by my brother Justice A. P. Subba, I would add the following observations: -

32. It is well settled that it is not the function and duty of the Court to hear appeals over a decision of the Selection Committee and to scrutinise the relative merits of the

candidates. Whether the candidates are fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the experience on the subject as the Court has no such expertise. However, it is made clear that the decision of the Selection Committee can be interferred with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved malafides affecting the selection. At this stage, I hereby recall the decision of the Apex Court rendered in Dalpat Abasaheb Solunke vs. Dr. B. S. Mahajan AIR 1990 SC 434. Apart from that, it is also open to the Court to review or to interfere where the facts taken as taken as a whole could not logically warrant the conclusion of the decision makers, but in the case in hand, we are of the view that the Selection Committee with its expertise selected the candidates and selection process was duly approved by the appropriate authority and as such there is no infirmity in the decision making process of the selection. However, it is seen from the available records that there are minor omission and commission on the part of the medical officers concerned who examined the selected candidates by showing three male candidates as female candidates in the medical report/papers. According to us, such omission and commission and minor discrepancies in the medical report shall not affect/vitiate the selection process as the same is curable, for which we hold that the appointment of the concerned private respondents/selected

candidates shall be subject to fresh medical tests and character verifications which shall be done by the authority concerned as early as possible preferably within one month from today.

33. For the reasons and observations made above, we are of the view that the writ petitioners could not make out a case to justify the interference with the related selection process. In the result, the Writ Petition is devoid of merit and accordingly, it is dismissed, but, no order as to costs.

(N. S. Singh)
Chief Justice (Acting)
23.06.2005